light larger than a given angle and passes light below a given angle (see abstract), and an absorber 10 on the other side. Structured and multilayer embodiments are shown (illustrated in figs 4 and 6). Therefore, these claims 17-19 are anticipated by this reference."

Applicants submitted a 37 CFR 1.131 declaration swearing behind Neijzen, U.S. Patent # 5,929,956.

Claim 20 has been rejected under 35 U.S.c. 102(b) as being anticipated by Neijzen, WO 98/23996. Since this reference has a publication date of June 4, 1998 and since applicant's 37 CFR 1.131 declaration swears behind November 24, 1997, the declaration swears behind Neijzen, WO 98/23996.

The Examiner states:

> Claim 20 written to, and Neijzen et al discloses (fig 3a-3c) a liquid crystal display with an incident and opposite side 14 and 9, diffusing liquid crystal 5, a and reflecting means 15 between the first and second substrates which reflects light larger than a given angle and passes light below a given angle (see abstract), and an absorber 10 on the other side. An angle dependent diffuser (illustrated in figs 4 and 6). Therefore, this claim is anticipated by this reference.

Applicant disagrees for the reasons given above. The Examiner does not specifically identify what element in Neijzen WO 98/23996 corresponds to the diffuser in the statement "An angle dependent diffuser (illustrated in figs 4 and 6). Therefore, this claim is anticipated by this reference."

The Examiner further states:

> Please note that the diffuser has not been given the date of the parent application, as the diffusing layer as the reflector was not in the parent case as one of ordinary skill would not have determined that applicant was in possession of the combination with that feature.

Applicant disagrees that applicants claim is not entitled to the priority of the parent application. In applicant's preliminary amendment applicant has identified in the parent specification and figures where the elements of the claims are found. The Examiner has not rebutted this.

The examiner further states:

> There are three separate elements that need to be discussed to clearly illuminate this issue
>
> 1) mirror like reflectors
>
> 2) diffuse reflecting reflectors
>
> 3) diffusers

The terms "mirror like reflector", "diffuse reflecting reflector" and "diffuser" do not appear in Neijzen WO 98/23996 or in Neijzen US 5929956.

The Examiner further states:

> Applicants original application only disclosed mirror like reflectors, and claimed and discussed to broader class "reflector. Diffuse reflecting reflectors are a specific type which were not disclosed, and appear not likely to be considered as meeting the written description requirement-however are not to what the claim is written to. Element #3, diffusers as typically used in the art and as used in the Neijzen reference, are substantially transmissive devices that radiate light in all directions, and are completely different than reflectors in there result and function, and are therefore not all equivalent, and would clearly not have met the written description requirement. The application by Neijzen is a rare case where the fact that the reflector is "leaky", the diffuser becomes useable in place of a reflector.

Applicant does not understand the argument that the Examiner is making since the argument relies on the terms "mirror like reflector", "diffuse reflecting reflector" and "diffuser" which do not appear in Neijzen WO 98/23996 or in Neijzen US 5929956. Consequently, it is not possible for applicant to understand what the Examiner is trying to say. Applicant respectfully request that the Examiner provide another non-final office action wherein the Examiner specifically identifies what the terms "mirror like reflector", "diffuse reflecting reflector" and "diffuser" correspond to in Neijzen WO 98/23996 or in Neijzen US 5929956 by column, line number and element number, or to withdraw the rejection. The Examiner is also presenting an argument bast on facts not of record. For example, the Examiner states "diffusers as typically used in the art and as used in the Neijzen reference, are substantially transmissive devices that radiate light in all directions, and are completely different than reflectors in there result and function, and are therefore not all equivalent, and would clearly not have met the written description requirement." The Examiner has not supported this statement with documentary evidence. As required under 37 CFR1.104(d)(2). Applicant request the Examiner to provide documentary evidence (i.e references) supporting the Examiner's position, or for the Examiner to provide an Examiner's affidavit qualifying the Examiner as having the sufficient expertise to make this statement, or to with draw this statement.

The Examiner further states: "The declaration filed on 6/14/02 under 37 CFR 1.131 has been considered but is ineffective to overcome the references." Applicant respectfully disagrees.

The Examiner further states:

> 1) The evidence submitted is insufficient to establish a conception of the invention in this country or a NAFT A or WTO member country prior to the effective date of the reference. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Neijzen, U.S. Patent # 5,929,956 reference, the affidavit or declaration and exhibits fail to clearly explain which facts or data applicant is relying on to show completion of the invention prior to the particular date. Specifically, the affidavit fails to set forth

the facts by which applicant seeks to show conception, as applicant needs to assert that the fact is some event that occurred before the date of the reference. If the invention disclosures were submitted and dated before the date of the reference, then the affidavit should set forth this fact. For example, in the beginning of element #3 of the affidavit, add the statement "Invention disclosures were submitted and dated before the filing date of Neijzen at al". If the invention disclosures were made after that date, but somehow being relied upon to show evidence the conception, then applicant should say how those disclosures should be construed as evidencing conception before the date of the reference.

Since applicant's declaration states that the "Invention disclosures were submitted and dated before the filing date of Neijzen at al", there conception predates the filing date of Neijzen at al.

The Examiner further states:

2) The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFT A or WTO member country prior to the effective date of the reference Neijzen, U.S. Patent # 5,929,956. No facts or evidence there of were presented in the affidavit indicating that the device was made and worked for its intended purpose before the date of the reference.

Applicant respectfully disagrees. Paragraph 3 of applicants declaration states "the claimed invention was developed in laboratories at IBM Corporation in Yorktown Heights, NY prior to the November 24, 1997 effective U.S. filing date of Neijzen, et al."

The Examiner further states:

3) The evidence submitted is insufficient to establish diligence from a date prior to the date of the Neijzen # 5,929,956 reference to either a constructive reduction to practice or an actual reduction to practice. No facts establishing diligence or evidence thereof was presented in the affidavit.

Diligence is not needed since the declaration shows that the claimed invention was developed before the effective U.S. filing date of Neijzen, et al.

The Examiner further states:

3) The reference Neijzen, U.S. Patent # 5,929,956 is a U.S. patent or U.S. Patent application publication of a pending or patented application that claims the rejected invention. An affidavit or declaration is inappropriate under 37 CFR 1.131(a) when the reference is claiming the same patentable invention, see MPEP § 2306. If the reference and this application are not commonly owned, the reference can only be overcome by establishing priority of invention through interference proceedings. See MPEP Chapter 2300 for information on initiating interference proceedings. If the reference and this application are commonly owned, the Serial Number: 09/589,306 patent may be disqualified as prior art by an affidavit or declaration under 37CPR 1.130. See MPEP § 718.

The present application and the reference Neijzen, U.S. Patent # 5,929,956 are not commonly owned.

The Examiner further states:

> 4) The reference Neijzen, WO 98/23996 is a statutory bar under 35 US.C. 102(b) and thus cannot be overcome by an affidavit or declaration under 37 CPR 1.131 (claim 20 only).

The reference Neijzen, WO 98/23996 is not a statutory bar under 35 US.C. 102(b) for the reasons given above.

The Examiner further states:

> It is noted that applicant has copied a claim of prior US Patent #5,929,956. As applicant is claiming the same invention as a patent which has an earlier effective United States filing date by greater than 3 months and as applicant has not submitted the items required by 37 CPR 1.608(a) or (b) in that no corroborating affidavit was provided, the application has been rejected under 35 US.C. 102(e)/103. Applicant is advised that the patent cannot be overcome by an affidavit or declaration under 37 CPR 1.131 but only through interference proceedings. See MPEP § 2308 and note that advised that an affidavit under 37 CPR 1.608(b) or evidence and an explanation under 37 CPR 1.608(b), as appropriate, must be submitted.

Applicant's declaration should be considered a statement under 37 CPR 1.608(a) or (b).

In view of the changes to the claims and the remarks herein, the Examiner is respectfully requested to reconsider the above-identified application. If the Examiner wishes to discuss the application further, or if additional information would be required, the undersigned will cooperate fully to assist in the prosecution of this application.

Please charge any fee necessary to enter this paper and any previous paper to deposit account 09-0468.

If the above-identified Examiner's Action is a final Action, and if the above-identified application will be abandoned without further action by applicants, applicants file a Notice of Appeal to the Board of Appeals and Interferences appealing the final rejection of the claims in the above-identified Examiner's Action. Please charge deposit account 09-0468 any fee necessary to enter such Notice of Appeal.

In the event that this amendment does not result in allowance of all such claims, the undersigned attorney respectfully requests a telephone interview at the Examiner's earliest convenience.

MPEP 713.01 states in part as follows:

Where the response to a first complete action includes a request for an interview or a telephone consultation to be initiated by the examiner, ... the examiner, as soon as he or she has considered the effect of the response, should grant such request if it appears that the interview or consultation would result in expediting the case to a final action.

Respectfully submitted,

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